

# Terms and Conditions for the Purchase and Sale of AFC and Tellabs Access Products before May 10, 2006

This form constitutes Tellabs North America, Inc. ("Tellabs") terms governing any order for AFC and Tellabs Access Products placed by Customer ("Customer") before May 10, 2006, based on the following terms and conditions ("Terms"). Tellabs Access Products include products from the Tellabs® 1000 series, the Tellabs® 1100 series, the Tellabs® 1600 series, and the Tellabs® 1900 series.

## 1. Purchase Orders

Tellabs' acceptance of Customer's order is expressly conditioned upon Customer's assent to these Terms to the exclusion of any additional or different terms or conditions preprinted on Customer's order form, which assent shall be presumed conclusively from Customer's failure to timely object in writing or from Customer's acceptance of any or all of the Products ordered. All orders are subject to acceptance by Tellabs in California and satisfaction of Tellabs' credit requirements.

## 2. Product Selection

Customer accepts the responsibility for (a) making the appropriate Product selection to achieve Customer's intended results, (b) the use of the Products, and (c) the results obtained therefrom. Customer also has the responsibility for the selection and use of, and the results obtained from, any other equipment, programs or services used with the Products.

## 3. Prices

The prices for the products and/or services ("Products") sold shall be Tellabs' prices at the time Tellabs receives Customer's order less any volume discount or special discount Customer may be entitled to hereunder. Such prices are exclusive of taxes, governmental charges, shipping and insurance.

## 4. Rescheduling, Reconfiguration or Cancellation

All requests to reschedule, reconfigure or cancel an order are subject to acceptance by Tellabs. Should Customer request, and Tellabs accept, any such rescheduling, reconfiguration or cancellation, Customer agrees to pay to Tellabs cancellation and/or reconfiguration/rescheduling charges as a percentage of the list price and/or license fee of the Products cancelled, rescheduled or reconfigured, not as a penalty, but as an agreed to amount based on the difficulty of computing actual charges. Such charges are as follows:

Customer Notice Received Prior to Scheduled Shipment Date	Reschedule/ Reconfiguration Charges	Cancellation Charges
a. 31–60 days:	5%	10%
b. 30 days or fewer:	10%	15%

*Products may not be cancelled, rescheduled or reconfigured after shipment.*

## 5. Shipping and Delivery

Tellabs will schedule shipments based on Customer's requests and Tellabs' estimated shipping capability. The expected shipping date is for estimation only. Tellabs will not be liable for damages due to any variance from the expected shipping date. Tellabs may make partial shipments unless Customer's order specifically objects.

Delivery shall be FOB Tellabs' shipping dock. For Products shipped freight prepaid and/or insured, Tellabs will bill Customer freight insurance charges. These charges may be shown on the invoice as a single item identified as Transportation Services or as separate items. Tellabs will not be liable for any delay or failure to deliver resulting from circumstances beyond Tellabs' sole control, or when to avoid such would cause Tellabs to incur unreasonable expense.

## 6. Software

Software, including software products and software incorporated within Products, is provided under license and is subject to the terms of a separate license agreement, a copy of which is available at [http://www.tellabs.com/legal/tlab\\_sw\\_license-afc\\_branded.pdf](http://www.tellabs.com/legal/tlab_sw_license-afc_branded.pdf) or upon request. Tellabs does not warrant in any way the quality or reliability of Products (including software, firmware, and hardware) purchased from an unauthorized source or repaired by an uncertified repair facility. The software license associated with Tellabs' Products is nontransferable and non-sublicensable. Obtaining Tellabs Products or software from an unauthorized reseller means that the software is not licensed and cannot be operated legally. Any Tellabs Product or software that is not sold by Tellabs or one of its authorized resellers will not be supported by Tellabs' Technical Assistance Center.

## 7. Title, Risk of Loss, and Security Interest

Title to all Products (except software) and risk of loss will pass to Customer upon tender to the carrier. Title to software products remains with Tellabs or its licensors. Tellabs shall maintain a purchase money security interest until Customer has satisfied its payment obligations in full with respect to any Product purchased from Tellabs. Customer shall provide reasonable assistance to Tellabs in filing this document, any other applicable agreement, and/or financing statements pursuant to the Uniform Commercial Code or other applicable law to evidence or perfect such purchase money security interest.

## 8. Taxes

Any and all state and local sales, use, excise, privilege, and similar taxes imposed on Tellabs or which Tellabs has a duty to collect in connection with the sale, delivery or use of any Product or service will appear as separate items on the invoice. This section shall not apply to taxes based on Tellabs' net income. If Customer is exempt from such taxes, Customer shall furnish Tellabs a certificate of exemption.

## 9. Invoices and Payment

Upon each shipment, Tellabs will issue an invoice to the address specified in Customer's order. Payment of invoices shall be due thirty (30) days from invoice date. All payments shall be in U.S. dollars.

If Customer fails to pay for the Products when due per the stated payment terms, Customer shall pay interest at 1.5% per month (or maximum allowed by law, if less). Tellabs may change its credit terms and/or suspend performance under any order, even prior to shipment, when in Tellabs' sole discretion, Customer's financial condition or record of payments so warrants. Customer agrees to pay any third-party collection expenses, including attorneys fees, incurred by Tellabs to collect any unpaid amounts.

## 10. Evaluation or Loan

Products provided for evaluation purposes, including but not limited to demonstration, testing, lab trials, or giveaway, shall be subject to the terms of Tellabs' Product Evaluation Agreement, a copy of which is available upon request. Products provided for loan purposes shall be subject to the terms of Tellabs' Product Loan Agreement, a copy of which is available upon request.

## 11. Installation

Customer is responsible for installation of Products unless Customer purchases installation services from Tellabs pursuant to a separate quote. If Customer orders installation of Products covered by this Agreement from Tellabs, Tellabs will contact Customer to schedule ship dates for the installation materials and dates for commencement of installation services.

## 12. Warranty and RMA Policy

Product purchased from or repaired by any unauthorized third party shall void Customer's warranty. The Products purchased hereunder shall be governed by and subject to Tellabs' then-current hardware and software warranty provisions available at [http://www.tellabs.com/legal/tellabs\\_warranty\\_policy.pdf](http://www.tellabs.com/legal/tellabs_warranty_policy.pdf) or upon request. Customer shall not incorporate any components or other equipment into any of the Products or systems, other than those specified or authorized by Tellabs. Warranty services are subject to payment and are nontransferable, non-sublicensable and non-assignable without the written consent of Tellabs.

## 13. Confidentiality

All information which the Customer receives or acquires from Tellabs either in writing, orally or through observation of Tellabs' operation, and in the course of Customer fulfilling its obligations hereunder, shall be held by the Customer in strictest confidence at all times. The terms and conditions of the parties' confidentiality agreement (the "NDA"), if any, are hereby incorporated by reference herein. In the event of any conflict between the terms of the NDA and this Agreement, this Agreement shall prevail.

Customer agrees that money damages would be inadequate as a remedy for any breach of this section and that, in addition to all other remedies available at law or in equity, Tellabs shall be entitled to seek specific performance and preliminary and permanent injunctive relief as a remedy for any such breach.

## 14. Export Restrictions

Customer shall fully comply with all applicable laws, statutes, treaties, ordinances, regulations, judicial orders and administrative orders, including but not limited to the U.S. Export Administration Laws and Regulations and shall not export or re-export any Products, nor any direct Product thereof, to any person or company who is a legal resident of or is controlled by a legal resident of any proscribed country in the U.S. Export Administration Regulations (as the same may be amended from time to time), unless properly authorized by the U.S. Government.

## 15. Infringement

Tellabs will, at its expense, defend Customer against any meritorious claim based on an allegation that a Product furnished hereunder infringes a U.S. patent or U.S. copyright and Tellabs will pay any damages finally awarded against Customer that are attributable to such claim; provided that, 1) Customer notifies Tellabs within thirty (30) days in writing of the claim, 2) Tellabs is permitted to control the defense or settlement of the claim, and 3) Customer cooperates reasonably in such defense or settlement.

In its defense or settlement of any claim, Tellabs may, at its sole option, 1) procure for Customer the right to continue using the Product, 2) modify the Product so that its use becomes noninfringing, 3) replace the Product with a comparable Product not subject to the claim, or terminate the license for the Infringing Products and refund the license fees paid for such Products.

Tellabs shall have no liability to Customer for claims of infringement based upon 1) the use of any Product in a manner other than that for which it is intended or in combination with any product not supplied by Tellabs; or 2) the use of any Product designed, manufactured or modified to the specifications of Customer; Customer shall defend indemnify, and hold Tellabs harmless against any expense (including but not limited to reasonable attorney's fees), judgment or loss for alleged infringement of any patents, copyrights, trade secrets or trademarks which result from Tellabs' compliance with Customer's designs, specifications or instructions.

The foregoing states the entire obligation and liability of Tellabs with respect to infringement and claims thereof.

## 16. Limitation of Liability

IN NO EVENT SHALL TELLABS BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF USE, DATA, PROFIT, BUSINESS, OR GOODWILL OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN AN ACTION OF CONTRACT, TORT OR OTHER LEGAL THEORY EVEN IF TELLABS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TELLABS' LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT), SHALL BE LIMITED TO THE PRICE OF SUCH PRODUCT(S) AND/OR SERVICES THAT CAUSED THE DAMAGES OR ARE THE SUBJECT MATTER OF THE CAUSE OF ACTION.

Tellabs shall have no liability whatsoever for delays in shipment or failure to ship caused by events beyond its sole control, including but not limited to fires, strikes, embargoes, transportation delays, earthquakes, storms, wars, acts of war, acts of terrorism and governmental or state regulations. No action arising out of or in connection with this Agreement or any transaction hereunder may be brought by either party more than one (1) year after the cause of action arises, except for an action for non-payment.

### 17. Notice

Any notice to be given hereunder by either party to the other shall be in writing and shall be deemed given when sent either by mail to the business address listed on the first page of this Agreement or by facsimile with a confirmation sent by mail.

### 18. Assignment

Customer may not assign or otherwise transfer its rights or obligations under these terms and conditions, nor resell, lease, rent, sublicense or otherwise transfer any Tellabs confidential information, Products or components or portion of such Products to any third party, without the prior written consent of Tellabs. No attempt to assign or transfer in violation of this provision will be binding upon Tellabs.

### 19. Termination

Tellabs shall have the right to terminate any order hereunder if Customer (a) attempts to assign this Agreement or any rights hereunder in violation of the terms of this Agreement (the word “assign” to include, without limiting the generality thereof a transfer of a majority interest in Customer), or (b) neglects or fails to perform or observe any of its existing or future obligations to Tellabs, whether under this Agreement or otherwise, upon Customer’s receipt of written notification of termination from Tellabs.

At any time even after shipment, either party may terminate any order by written notice, in the event that the other files a voluntary petition in bankruptcy or under any similar insolvency law, makes an assignment for the benefit of creditors, an involuntary petition in bankruptcy or under any similar insolvency law is filed against the other party, a receiver is appointed for the other party, or a levy or attachment is issued against the other party, any of which is not discharged within sixty (60) days after the filing or appointment.

### 20. Governing Law

The rights of the parties hereunder shall be governed by and construed exclusively in accordance with the laws of the State of California without regard to its conflict of laws provisions; any proceeding shall occur exclusively in San Francisco, California.

Any claim, controversy or dispute between the parties, their agents, employees, officers, directors or affiliated agents (“Dispute”) shall be exclusively resolved by arbitration in San Francisco, California, conducted by a single arbitrator (selected by mutual agreement of the parties) engaged in the practice of law, under the then-current Commercial Arbitration Rules of the American Arbitration Association. The arbitrator’s award shall be final and binding, is the only means of dispute resolution and may be entered in any court having jurisdiction thereof. Notwithstanding the above, it is expressly agreed that either party may seek injunctive relief in an appropriate court of law or equity pending an award in arbitration.

### 21. Attorneys Fees

If legal proceedings are commenced by either party to enforce any contract, including these Terms, then in addition to any other relief awarded by a court of competent jurisdiction, the prevailing party shall be entitled to recover its reasonable costs and attorneys fees, including any appeal.

### 22. Waiver

The failure of either party to enforce any provision of these terms and conditions shall not be construed as a waiver of such provision or the right thereafter to enforce each and every provision. No waiver by either party, express or implied, of any breach of these terms and conditions shall be construed as a waiver of any other breach of such term or condition.

### 23. Entire Agreement

These Terms encompass the entire agreement between Customer and Tellabs, superseding all other terms and conditions between Customer and Tellabs except in situations where Customer and Tellabs have entered into a separate agreement. Tellabs shall not be bound by any terms not written herein. If any portion hereof is found unenforceable or invalid by operation of law or rule of court, the same shall not invalidate this entire Agreement, the balance of which shall remain in full force and effect. Sections 6, 7, 9, 13, 14, 16, 18, 19, 21 and 22 of these Terms shall survive any fulfillment of the parties’ obligations hereunder.

#### North America

Tellabs  
One Tellabs Center  
1415 West Diehl Road  
Naperville, IL 60563  
U.S.A.  
+1 630 798 8800  
Fax: +1 630 798 2000

#### Asia Pacific

Tellabs  
3 Anson Road  
#14-01 Springleaf Tower  
Singapore 079909  
Republic of Singapore  
+65 6215 6411  
Fax: +65 6215 6422

#### Europe, Middle East & Africa

Tellabs  
Abbey Place  
24-28 Easton Street  
High Wycombe, Bucks  
United Kingdom  
HP11 1NT  
+44 870 238 4700  
Fax: +44 870 238 4851

#### Latin America & Caribbean

Tellabs  
1401 N.W. 136th Avenue  
Suite 202  
Sunrise, FL 33323  
U.S.A.  
+1 954 839 2800  
Fax: +1 954 839 2828

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